

# **CALIFORNIA LAW REVISION COMMISSION**

*Preprint* RECOMMENDATION

Obsolete Cross-References to Former  
Code of Civil Procedure Section 383

November 2004

California Law Revision Commission  
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## SUMMARY OF RECOMMENDATION

Recent legislation repealed Code of Civil Procedure Section 383 and relocated its substance, without change, to the Davis-Stirling Common Interest Development Act. The proposed law would update statutory cross-references to former Section 383 to reflect the relocation of its substance.

This recommendation was prepared pursuant to Resolution Chapter 192 of the Statutes of 2003.

OBSOLETE CROSS-REFERENCES TO FORMER  
CODE OF CIVIL PROCEDURE SECTION 383

1 Former Code of Civil Procedure Section 383 provided that an association  
2 established to manage a common interest development can sue on behalf of its  
3 members in certain specified actions. It also provided special rules relating to  
4 comparative fault in such a suit.

5 In 2004, Section 383 was repealed and its substance was relocated, without  
6 change, to the Davis-Stirling Common Interest Development Act.<sup>1</sup>

7 The proposed law would update statutory cross-references to former Section 383  
8 to reflect the relocation of its substance. The proposed changes are nonsubstantive.

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1. See 2004 Cal. Stat. ch. 754, §§ 4, 7. Subdivision (a) of former Section 383 is continued without substantive change in Civil Code Section 1368.3. Subdivisions (b)-(e) of former Section 383 are continued without substantive change in Civil Code Section 1368.4. See *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003).



## PROPOSED LEGISLATION

1 **Civ. Code § 945 (amended). Application of requirements relating to action for construction**  
2 **defect**

3 SECTION 1. Section 945 of the Civil Code is amended to read:

4 945. The provisions, standards, rights, and obligations set forth in this title are  
5 binding upon all original purchasers and their successors-in-interest. For purposes  
6 of this title, associations and others having the rights set forth in ~~Section 383 of the~~  
7 ~~Code of Civil Procedure~~ Sections 1368.3 and 1368.4 shall be considered to be  
8 original purchasers and shall have standing to enforce the provisions, standards,  
9 rights, and obligations set forth in this title.

10 **Comment.** Section 945 is amended to correct the cross-reference to former Code of Civil  
11 Procedure Section 383. This is a nonsubstantive change. The substance of former Code of Civil  
12 Procedure Section 383 is continued in Sections 1368.3 and 1368.4. See 2004 Cal. Stat. ch. 754,  
13 §§ 4, 7; *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision  
14 Comm'n Reports 689 (2003).

15 **Civ. Code § 1363 (amended). Community association management**

16 SEC. 2. Section 1363 of the Civil Code is amended to read:

17 1363. (a) A common interest development shall be managed by an association  
18 which may be incorporated or unincorporated. The association may be referred to  
19 as a community association.

20 (b) An association, whether incorporated or unincorporated, shall prepare a  
21 budget pursuant to Section 1365 and disclose information, if requested, in  
22 accordance with Section 1368.

23 (c) Unless the governing documents provide otherwise, and regardless of  
24 whether the association is incorporated or unincorporated, the association may  
25 exercise the powers granted to a nonprofit mutual benefit corporation, as  
26 enumerated in Section 7140 of the Corporations Code, except that an  
27 unincorporated association may not adopt or use a corporate seal or issue  
28 membership certificates in accordance with Section 7313 of the Corporations  
29 Code.

30 The association, whether incorporated or unincorporated, may exercise the  
31 powers granted to an association by ~~Section 383 of the Code of Civil Procedure~~  
32 ~~and the powers granted to the association in this title.~~

33 (d) Meetings of the membership of the association shall be conducted in  
34 accordance with a recognized system of parliamentary procedure or any  
35 parliamentary procedures the association may adopt.

36 (e) Notwithstanding any other provision of law, notice of meetings of the  
37 members shall specify those matters the board intends to present for action by the  
38 members, but, except as otherwise provided by law, any proper matter may be  
39 presented at the meeting for action.

1 (f) Members of the association shall have access to association records,  
2 including accounting books and records and membership lists, in accordance with  
3 Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of  
4 Title 1 of the Corporations Code. The members of the association shall have the  
5 same access to the operating rules of the association as they have to the accounting  
6 books and records of the association.

7 (g) If an association adopts or has adopted a policy imposing any monetary  
8 penalty, including any fee, on any association member for a violation of the  
9 governing documents or rules of the association, including any monetary penalty  
10 relating to the activities of a guest or invitee of a member, the board of directors  
11 shall adopt and distribute to each member, by personal delivery or first-class mail,  
12 a schedule of the monetary penalties that may be assessed for those violations,  
13 which shall be in accordance with authorization for member discipline contained  
14 in the governing documents. The board of directors shall not be required to  
15 distribute any additional schedules of monetary penalties unless there are changes  
16 from the schedule that was adopted and distributed to the members pursuant to this  
17 subdivision.

18 (h) When the board of directors is to meet to consider or impose discipline upon  
19 a member, the board shall notify the member in writing, by either personal  
20 delivery or first-class mail, at least 10 days prior to the meeting. The notification  
21 shall contain, at a minimum, the date, time, and place of the meeting, the nature of  
22 the alleged violation for which a member may be disciplined, and a statement that  
23 the member has a right to attend and may address the board at the meeting. The  
24 board of directors of the association shall meet in executive session if requested by  
25 the member being disciplined.

26 If the board imposes discipline on a member, the board shall provide the member  
27 a written notification of the disciplinary action, by either personal delivery or first-  
28 class mail, within 15 days following the action. A disciplinary action shall not be  
29 effective against a member unless the board fulfills the requirements of this  
30 subdivision.

31 (i) Whenever two or more associations have consolidated any of their functions  
32 under a joint neighborhood association or similar organization, members of each  
33 participating association shall be entitled to attend all meetings of the joint  
34 association other than executive sessions, (1) shall be given reasonable opportunity  
35 for participation in those meetings and (2) shall be entitled to the same access to  
36 the joint association's records as they are to the participating association's records.

37 (j) Nothing in this section shall be construed to create, expand, or reduce the  
38 authority of the board of directors of an association to impose monetary penalties  
39 on an association member for a violation of the governing documents or rules of  
40 the association.

41 **Comment.** Subdivision (c) of Section 1363 is amended to delete the cross-reference to former  
42 Code of Civil Procedure Section 383. This is a nonsubstantive change. Because the substance of  
43 former Section 383 is continued in this title, a separate reference to the powers conferred by

1 former Section 383 is unnecessary. See Sections 1368.3, 1368.4; 2004 Cal. Stat. ch. 754, §§ 4, 7;  
2 *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n  
3 Reports 689 (2003).

4 **Civ. Code § 1374 (amended). Application of Davis-Stirling Common Interest Development**  
5 **Act**

6 SEC. 3. Section 1374 of the Civil Code is amended to read:

7 1374. Nothing in this title may be construed to apply to a development wherein  
8 there does not exist a common area as defined in subdivision (b) of Section 1351;  
9 ~~nor may this title be construed to confer standing pursuant to Section 383 of the~~  
10 ~~Code of Civil Procedure to an association created for the purpose of managing a~~  
11 ~~development wherein there does not exist a common area.~~

12 This section is declaratory of existing law.

13 **Comment.** Section 1374 is amended to delete the cross-reference to former Code of Civil  
14 Procedure Section 383. This is a nonsubstantive change. The substance of former Section 383 is  
15 continued in this title and therefore does not apply to a development that lacks a common area.  
16 Specific language making clear that former Section 383 does not confer standing on an  
17 association created for the purpose of managing such a development is no longer required. See  
18 Sections 1368.3, 1368.4; 2004 Cal. Stat. ch. 754, §§ 4, 7; *Alternative Dispute Resolution in*  
19 *Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003).

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